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Report to the Chairman, Subcommittee on Oversight and Investigations, Committee on Energy and Commerce, House of Representatives

March 1988

ENERGY REGULATION

Enforcement of Requirements Imposed on Hydropower Projects Needs Strengthening

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Economic Development Division

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The Honorable John D. Dingell
Chairman, Subcommittee on Oversight
and Investigations
Committee on Energy and Commerce
House of Representatives

Dear Mr. Chairman:

In response to your April 11, 1986, request, this report discusses the Federal Energy Regulatory Commission's monitoring and enforcement of federal requirements imposed on hydropower projects. The report recommends that the Commission take steps to ensure timely and consistent follow-up on overdue compliance items, improve the accuracy of its computerized tracking system to make it more useful as a monitoring tool, and ensure that a comprehensive compliance history is developed on a project when it is needed for relicensing or enforcement purposes. We believe these steps are necessary to improve compliance monitoring and provide for the fair and equitable implementation of the civil penalty program authorized by the Electric Consumers Protection Act.

As arranged with your office, unless you publicly announce its contents earlier, we plan no further distribution of this report until 30 days from the date of the letter. At that time, we will send copies to the Commission Chairman; the Secretary of Energy; the Director, Office of Management and Budget; and other interested parties. We will also make copies available to others upon request.

Sincerely yours,

J. Dexter Peach

J. Dexter Peach
Assistant Comptroller General

Executive Summary

Purpose

The Federal Energy Regulatory Commission (FERC) oversees the operation of over 1,700 hydroelectric projects to protect fish and wildlife, water quality, and public safety.

At the request of the Chairman, Subcommittee on Oversight and Investigations, House Committee on Energy and Commerce, GAO examined the adequacy and timeliness of FERC's hydropower compliance and enforcement activities in the following areas:

- monitoring projects for compliance with federal requirements and
- conducting investigations and resolving instances of noncompliance.

Background

FERC authorizes the operation and construction of nonfederal hydroelectric projects through the issuance of licenses or exemptions, which exempt a project from some or all of the licensing requirements. In issuing both licenses and exemptions, however, FERC imposes requirements to protect the environment and public safety.

FERC monitors compliance with these requirements by (1) conducting periodic physical inspections of the projects' construction, operation, and maintenance and (2) checking to ensure that project owners submit required plans, studies, and reports. FERC also investigates cases of possible noncompliance identified by monitoring or by complaints to determine if any enforcement action is needed.

Two provisions of the 1986 Electric Consumers Protection Act will affect FERC's compliance and enforcement activities. The act requires FERC to consider a project's compliance history in evaluating its application for relicensing and authorizes FERC to impose a civil penalty on project owners who violate any regulations or any license or exemption requirement. FERC has published proposed implementing regulations for the penalty program, but as of January 1988, they had not been finalized.

Results in Brief

GAO found that FERC generally conducts physical inspections of projects in accordance with its established procedures and monitors correction of any identified problems. Because of ineffective controls, however, FERC's monitoring of compliance with items required by the licenses and exemptions, such as emergency action plans and dam safety reports, does not always result in timely and consistent follow-up of overdue items. Furthermore, because of inaccurate data, FERC's computerized

tracking system is of limited use as a tool to carry out and oversee its monitoring. Correction of these problems is important to proper implementation of new civil penalty requirements in the Electric Consumers Protection Act.

Principal Findings

Better Controls Over Monitoring Needed

FERC's internal controls did not ensure that FERC engineers took timely follow-up action when project operators were late in submitting required items, or that the same type of follow-up action was taken in similar circumstances. Further, because it contained inaccurate data, FERC's data system could not be relied on, as intended, to track compliance with license and exemption requirements and to facilitate management oversight of FERC's monitoring and follow-up activities. Unless timely and consistent follow-up action is taken on all overdue items, civil penalties cannot be imposed in a fair and equitable manner.

GAO reviewed 100 requirements from 27 categories of license and exemption requirements. These 27 categories were the more critical in terms of safety and environmental concerns out of about 100 categories of requirements tracked by FERC. The requirements related to projects in two of the five FERC regions. Twenty-eight of the 100 requirements reviewed were overdue. FERC took timely follow-up action on 12 of these overdue requirements, took late follow-up action for 4 items, and could provide no evidence of follow-up action on the remaining 12 items. This occurred despite FERC guidelines specifying time frames for follow-up actions. One reason for follow-up that was not timely was that headquarters staff did not notify regional staff (who are responsible for follow-up) of actions that established or changed dates that were the basis for follow-up action.

For the 16 overdue items for which FERC had documentation of follow-up action, the type of follow-up action was not consistent. Because of discretion given to FERC's regional engineers, the seriousness of the actions taken ranged from phone calls to formal delinquency letters.

Shortcomings in FERC's computerized data affected the system's usefulness as both a tracking and an oversight mechanism. GAO's review of 100 compliance items showed that (1) 12 of the 19 due dates for responses to delinquency or deficiency letters were not recorded in the system, (2) 9

records were closed before FERC had determined the acceptability of the submitted item, and (3) 8 of the 28 due dates established when time extensions were granted were not supported by proper documentation.

Timely and consistent follow-up is particularly important now to ensure that any civil penalties imposed under the program recently authorized by the Electric Consumers Protection Act are fair and equitable. Under the act and FERC's proposed implementing regulations, FERC can impose a penalty when project owners do not comply with any term or condition of their license or permit. The penalty amount will be based, in part, on whether or not remedial efforts were timely.

FERC officials indicated in January 1988 that they plan to take steps to improve the accuracy of the data in the computerized tracking system and provide for more timely and consistent follow-up of overdue actions.

New Task Force Established to Avoid Past Delays

Inadequate oversight and a lack of communication and coordination between the three FERC offices involved also allowed apparent delays in the investigation of possible noncompliance cases to go unquestioned. GAO's review of the 184 cases investigated by FERC from January 1, 1985, through June 1, 1987, showed that 55 were under review for more than a year. In 47 cases (or about 85 percent), files showed lapses when FERC did not appear to be taking any action. The delays in some of these cases allowed noncompliance to continue or precluded FERC enforcement action.

Recently, FERC took steps to help prevent unnecessary delays in compliance investigations. In early 1987 during GAO's review, FERC established a task force with representatives from each of the offices involved to coordinate the processing of noncompliance cases. The task force also exchanges information about ongoing cases. As of January 1988, FERC was developing formal procedures for the operation of the task force. Although it is too soon to judge its effectiveness, GAO views the task force as a step in the right direction to help prevent the types of problems that caused past delays.

Historical Information on Compliance Needed

Project compliance histories are needed to implement the new Electric Consumers Protection Act. FERC must consider a project's compliance history in determining the amount of any civil penalty to be imposed and in making decisions on relicensing of projects. FERC's regional offices

have been directed to reconstruct past compliance information as needed and to compile files on all current and future compliance actions.

Because of communication problems between the offices involved, however, the regional project files do not have complete information about past compliance actions and procedures do not exist to ensure that information about current and future cases will be forwarded to the regional offices.

FERC officials indicated in January 1988 that they are developing a computerized system that will supplement the files being compiled by the regional office staffs. This system will record and compile information on all noncompliance actions.

Recommendations

To ensure adequate internal controls over follow-up of overdue items and provide for fair and consistent implementation of the new penalty program, GAO recommends that the Chairman, FERC, have the Director, Office of Hydropower Licensing, increase managerial oversight to ensure that (1) regional office staff are promptly notified about headquarters' actions involving approval of time extensions and deficiencies found in submitted items and (2) staff comply with existing guidelines regarding the timeliness of follow-up actions.

The Director should also prescribe uniform follow-up actions to be taken when required items are overdue and require supervisory review and approval of data entries to the computerized tracking system.

GAO also recommends that FERC develop effective procedures for assembling complete compliance histories. (See chap. 3.)

Agency Comments

GAO discussed the findings in this report with agency program officials and has included their comments where appropriate. However, as requested by the Chairman's office, GAO did not obtain official agency comments on a draft of this report.

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Abbreviations

DINS	Division of Inspections, Office of Hydropower Licensing
ECPA	Electric Consumers Protection Act of 1986
FERC	Federal Energy Regulatory Commission
FPA	Federal Power Act
GAO	General Accounting Office
HLCTS	Hydropower License Compliance Tracking System
OGC Hydro	Office of General Counsel's Hydroelectric Licensing Section

Introduction

The Federal Energy Regulatory Commission (FERC), established in 1977 by the Department of Energy Organization Act, inherited various responsibilities originally held by the Federal Power Commission. Among these are responsibility for licensing and inspecting hydropower projects under the authority of the Federal Power Act (FPA), as amended, and related laws. FERC is also responsible for regulating the sale and transportation of electric power, natural gas, and oil in interstate commerce.

Background

FERC has jurisdiction over all nonfederal hydroelectric projects that

- are on any navigable waters of the United States;
- are on any waters over which the Congress has jurisdiction under its authority to regulate interstate and foreign commerce, had post-1935 construction or modification, and would affect interstate or foreign commerce;
- are on any part of the public lands or reservations of the United States; or
- use surplus water or water power from any government dam.

FERC grants permission to construct or operate such projects by granting a license or exemption. A license can be issued for a term of up to 50 years. FERC may issue an exemption for

- projects on conduits with installed generating capacity of 15 megawatts or less[1] or
- small power projects using existing dams or certain natural water features with installed generating capacity of 5 megawatts or less.

The issuance of a license is conditioned on the project owner's accepting all of the terms and conditions specified in the FPA and other conditions that FERC prescribes. In addition to the FPA requirement that the project must be adequately maintained at all times, FERC imposes specific requirements to protect the environment. For example, minimum flow requirements provide that a certain volume of water must pass over the dam to protect fishery resources in the area of the stream where water is diverted to the power plant. Similarly, FERC may prescribe the construction of fish screens to prevent fish from entering the power plant and being destroyed by the turbines.

[1] A conduit is any tunnel, canal, pipeline, or similar man-made water conveyance used to distribute water for primarily agricultural, municipal, and/or industrial consumption.

Under an exemption, the project owner may be exempted from all or part of the regulatory requirements applicable to licensed projects. However, FERC still imposes requirements such as those that subject the project owner to any conditions that federal and state fish and wildlife agencies determine are necessary to prevent loss of, or damage to, fish or wildlife resources.

FERC also may impose requirements to protect the life and property of nearby residents on both licensed and exempted projects. For example, FERC requires projects with dams over a certain size to be inspected by an independent consultant every 5 years. In addition, operators of dams that could cause damage to life and property if they fail must develop an emergency action plan to provide early warning to inhabitants, property owners, and recreational users and provide for the orderly evacuation of those people at risk.

Since 1978 the number of hydroelectric projects under FERC jurisdiction has increased significantly, primarily as a result of the rise in world oil prices during that period and enactment of legislation encouraging hydropower development. In July 1987 there were 1,018 licensed and 689 exempted projects, according to the Director of the Division of Inspections. These projects range from very large projects with multiple developments and dams to very small projects that do not have dams.

For example, one large project owned by a state agency consists of two high-hazard dams[2] and two developments with an installed generating capacity of over 2 million kilowatts. Another large project owned by a public utility has installed generating capacity of 163,850 kilowatts (with another 13,500 kilowatts of capacity under construction). This project, however, consists of 9 developments, which include 46 dams (5 high-hazard, 12 significant-hazard, and 29 low-hazard). At the other extreme is an exempted project with installed generating capacity of only 10 kilowatts. This project has a structure to divert water from a stream to the power plant but does not have a dam.

FERC's Compliance Monitoring

The Division of Inspections (DINS) of FERC's Office of Hydropower Licensing, and the regional offices, which report to DINS, are primarily responsible for monitoring compliance with FERC regulations and license and exemption requirements. FERC monitors compliance by

[2]FERC designates a dam as high, significant, or low hazard on the basis of the potential impact a sudden release of water would have in terms of loss of life or property damage.

- determining whether projects have submitted items required in the license or exemption by the due date,
- taking follow-up action if submissions are late,
- determining whether the items submitted fulfill the requirements of the license or exemption (some of the items must be reviewed and approved by other segments of the Office of Hydropower Licensing, such as the Division of Environmental Analysis), and
- conducting physical inspections of the project.

In monitoring the license or exemption requirements, FERC uses a computerized system known as the Hydropower License Compliance Tracking System (HLCTS). For each item tracked for a project, HLCTS contains background information describing the item, the article in the license or exemption that established the requirement, and the segment of the organization responsible for reviewing it after it is received. The due date is the basis for tracking compliance with the requirement. When FERC receives and subsequently accepts the required item, these dates should be entered and the HLCTS record retired.

Engineers in FERC's regional offices are responsible for making sure that these items are submitted. If FERC has not received the item by the due date (or the extension date, if an extension was requested and granted), a regional engineer is to send a delinquency letter describing the requirement and the date it was due, and requesting a response by a specified date (usually 30 to 60 days). If FERC does not receive a response by the specified date, the engineer is to send a noncompliance letter to the project owner stating that if the project does not comply within the time limit, FERC may recommend enforcement action. The date these letters are sent and the date by which a response is expected are entered in HLCTS to identify the need for further follow-up.

Similarly, if the item submitted is found to be inadequate, the reviewing office sends a deficiency letter identifying the corrections needed and specifying a response date. These dates are also recorded in HLCTS so that follow-up action will be taken if the response date is not met.

Engineers in FERC's regional offices conduct periodic physical inspections of all the projects under FERC jurisdiction. These inspections are primarily concerned with dam safety matters, but they also check on compliance with other license and exemption requirements. For example, the engineers inspect projects under construction to ensure that all the provisions of the license, construction plans, and specifications are complied with; engineers inspect operating projects to verify that they

are maintained and operated in compliance with the terms of the license. The engineers prepare inspection reports on each visit and send a letter to the project owner concerning any deficiencies that need correction. Serious deficiencies are tracked in HILCTS.

Noncompliance Investigations

Instances of possible noncompliance are identified either by FERC's compliance monitoring activities or by complaints received from outside parties. Any person, agency, or entity may file a complaint regarding the action of any FERC licensee, exemptee, or applicant for a license or exemption. FERC has received complaints from individuals, private fish and wildlife organizations, and federal and state agencies.

FERC first examines the complaint, generally through DINS or its regional offices, to determine whether it involves an issue under FERC jurisdiction. It then notifies the project owner of the complaint and requests a response within 30 to 60 days, depending on the complexity of the complaint. Most complaints are resolved at this point. The project owner either provides information to show that no laws or requirements imposed by FERC have been violated or provides information on what steps are being taken to correct the problem. If FERC is satisfied with the project owner's response, it gives the complainant an opportunity to comment on the project owner's response. If the complainant provides information to show that the problem has not been resolved, FERC will continue investigating the case.

Problems identified by compliance monitoring and complaints that cannot be resolved by the regional offices or DINS, and those cases that involve a legal issue or might warrant enforcement action, are referred to FERC's Office of General Counsel. The Office of the General Counsel's Hydroelectric Licensing group (OGC Hydro) generally reviews legal issues such as project boundary disputes or jurisdictional issues. The Office of General Counsel's Enforcement group reviews the cases to determine whether enforcement action should be considered. If so, it conducts an investigation to gather the information needed to make a decision on the appropriate action. The types of enforcement action FERC can take include issuing a cease and desist order, getting an injunction in district court, and revoking the license or exemption.

FERC investigated 184 complaint and compliance cases during the period of January 1, 1985, through June 1, 1987. Of these, 138 cases were initiated by complaints and 46 were identified by compliance monitoring. As

of June 1, 1987, 100 cases had been closed and 84 were still under investigation. The number of complaints received has increased in recent years. FERC received almost twice as many complaints in the first 5 months of 1987 as it did during the same periods in 1985 and 1986.

New Legislation Provides Civil Penalty Authority

The Electric Consumers Protection Act (ECPA), approved October 16, 1986, increased the tools FERC has to enforce its requirements. ECPA reemphasized FERC's responsibility and authority to monitor and investigate a project's compliance with its license or exemption requirements and to issue such orders as necessary to get such compliance. ECPA provides that FERC can revoke the license or exemption when a project owner knowingly violates such an order.

ECPA also gave FERC the authority to impose a civil penalty on any project owner who violates, or fails or refuses to comply with any order, rule, or regulation issued by FERC under the Federal Power Act or any term or condition of a license or exemption. ECPA directed FERC to consider the nature and seriousness of the violation and the timeliness of the licensee's efforts to remedy the problem in determining the amount of the penalty, which can be as high as $10,000 for each day the violation continues.

Objectives, Scope, and Methodology

On April 11, 1986, the Chairman of the Subcommittee on Oversight and Investigations, House Committee on Energy and Commerce, requested that we investigate FERC's compliance and enforcement activities related to its hydropower program.

The Chairman raised several specific issues, including

- the adequacy of FERC's monitoring of various license or exemption conditions to ensure that they are promptly met,
- the adequacy of FERC's investigations of instances of potential noncompliance identified by either complaints or compliance monitoring, and
- the adequacy of FERC's actions to resolve violations.

We reviewed the legislation and regulations related to FERC's hydropower program to determine what requirements are imposed on hydropower projects. This included examining the recently passed ECPA and the proposed FERC implementing regulations to determine what impact they would have on FERC's operations.

To evaluate the effectiveness of FERC's compliance monitoring, we examined 100 randomly selected requirements tracked by HLCTS and 100 randomly selected reports of physical inspections by FERC engineers. We concentrated our work on projects in FERC's New York and San Francisco regions because of the large number of projects in those regions, the volume of complaints they received, and their geographic diversity.[3]

In selecting our sample of compliance items tracked by HLCTS, we first obtained a duplicate of the data in the HLCTS system in December 1986. From this data, we identified 3,174 completed license and exemption requirements that had a due date in 1985 or 1986.[4] We eliminated earlier data because FERC officials indicated that although the system was implemented in 1984, data from the early years might not be very accurate or representative of current practices because of start-up problems and inconsistent procedures.

We narrowed the universe of almost 100 different types of items tracked by FERC to concentrate on the more important. On the basis of discussions with FERC officials and our examination of the different trackable items, we selected 27 categories that we judged to be the most critical in terms of safety and environmental concerns. Of the 3,174 items with due dates in 1985 or 1986, 1,247 were in the 27 categories selected. Of these, 115 were for projects in the San Francisco region and 258 were for projects in the New York region. From this listing, we randomly selected 50 items from projects in each of the 2 regions. (App. I lists the 27 trackable items we selected and the number of each in our sample.)

For each of the 100 randomly selected items, we reviewed supporting project records and compared information in such records with that recorded in HLCTS. Our review included an examination of the internal controls in place to ensure compliance with FERC procedures including discussion of the requirements and actions taken to get compliance with the responsible regional officials. We also reviewed legislation and FERC rules, regulations, and operating procedures to determine what steps

[3]FERC's San Francisco regional office is responsible for projects located in the states of California, Nevada, Utah, Colorado, Arizona, New Mexico, and Hawaii plus parts of southeastern Idaho. FERC's New York regional office is responsible for projects located in the states of Maine, New Hampshire, Vermont, Connecticut, Massachusetts, Rhode Island, New York, New Jersey, Delaware, Pennsylvania, West Virginia, Maryland, and the District of Columbia. The remaining three regional offices are located in Chicago, Illinois; Atlanta, Georgia; and Portland, Oregon.

[4]Because the due date is revised if FERC grants a request for a time extension, some of these requirements were originally due before this period.

FERC is authorized to take to get compliance from a project owner. We also interviewed regional and headquarters officials about the design and use of the HLCTS system and reviewed available documentation of the system.

We selected a separate sample of physical inspection reports. We randomly selected 50 projects in each region and examined the report of the most recent physical inspection of that project to determine (1) whether the inspection was conducted within the time frames required by FERC guidelines, (2) whether problems were identified during the inspection, and (3) the adequacy of FERC's internal controls over actions taken to ensure that any problems identified were corrected. While we did not evaluate the adequacy of the inspection conducted, we examined the project correspondence files for a period extending from 3 months before to 3 months after the inspection to determine whether any problems were reported that should have been identified and dealt with during the inspection. We also discussed these cases with responsible regional officials to clarify why certain actions were taken and to resolve any inconsistencies.

Both of the compliance and physical inspections samples were randomly selected. Our results, however, cannot be considered representative of all FERC compliance and enforcement activities because they do not represent all compliance items and regions. The time and cost of reviewing a comprehensive sample large enough to consistently achieve an acceptable level of precision were prohibitive. However, because our samples included a mix of the different types of license and exemption requirements and the different types of dam inspections conducted, they enabled us to review FERC's controls and procedures.

Our sample of compliance items was drawn from 373 of the 3,174 completed license and exemption requirements that had a due date in 1985 or 1986. The 373 items represented 27 of almost 100 different types of items in 2 of the 5 regions. (Statistical estimates of the number of the 373 New York and San Francisco items with various characteristics are given in app. II.)

The two samples of physical inspections were drawn from approximately 635 projects in the New York and San Francisco regions that were subject to inspection. (Statistical estimates of the number of projects whose most recent inspections had certain characteristics are given in app. III.)

To evaluate the adequacy of internal controls over complaint and noncompliance investigations and the actions taken to resolve violations, we examined all 184 cases investigated during the period of January 1, 1985, through June 1, 1987. In reviewing the cases, we determined what actions FERC took in gathering information on the issue, how long it took to resolve the case, what decision was reached regarding whether or not the project was in compliance, and what action was taken to resolve the case. We also determined whether FERC provided justification for the action taken and compared similar cases to determine whether they were handled comparably.

We discussed our findings with agency program officials in January 1988 and included their comments and updated information where appropriate. However, in accordance with the requester's wishes, we did not obtain the views of agency officials on our conclusions and recommendations, nor did we request official agency comments on a draft of this report. Our work was conducted from August 1986 through July 1987 and was performed in accordance with generally accepted government auditing standards.

Better Controls Needed Over Monitoring of FERC License and Exemption Requirements

FERC monitors a project's compliance with federal hydropower requirements by conducting periodic physical inspections and by ensuring that items required by the project's license or exemption are received. Our review of a sample of FERC's physical inspections showed that FERC generally conducted them in a timely manner and ensured that any problems identified were corrected. Because of ineffective procedures and inadequate oversight, however, FERC's monitoring of compliance with license and exemption requirements does not ensure that prompt and consistent action is taken when the required items are overdue. Our examination of a sample of the most critical license and exemption requirements relating to protection of the public, fish and wildlife, and the environment, identified the need for the following internal control improvements:

- Need to improve managerial oversight to ensure compliance with FERC procedures specifying that (1) regional staff take prompt follow-up action when project owners are late in submitting required items and (2) headquarters staff promptly notify regional staff when they take actions that establish or change dates that will be the basis for future follow-up action.
- Need to tighten FERC procedures to ensure that consistent follow-up action is taken when similar required items are overdue.
- Need to develop procedures to require managerial approval of entries to FERC's Hydropower License Compliance Tracking System (HLCTS) to ensure that entries are supported by adequate documentation and that information needed for tracking is entered correctly.

The need for effective controls to ensure consistency in the timing of follow-up and the type of follow-up action taken is particularly important now to ensure that the civil penalty program recently authorized by the Electric Consumers Protection Act can be implemented in a fair and equitable manner. Under the act and FERC's proposed regulations to implement it, FERC can impose a penalty when a project owner does not comply with any term or condition of the license or exemption. The amount of the penalty will be based, in part, on whether or not remedial efforts were timely. Therefore, if FERC does not take consistent actions when requirements are not met, it cannot impose penalties in a fair and equitable manner.

Improved Monitoring Procedures and Oversight Needed

Instances of overdue and inconsistent FERC actions in monitoring compliance with license and exemption requirements indicate the need for better procedures and management oversight. With such improvements, FERC could better ensure that follow-up action is taken within the time period specified by FERC procedures and that consistent actions are taken when requirements are not met. Furthermore, HLCTS is less effective as a tracking and oversight mechanism because standardized procedures do not exist to ensure that data in the system are accurate and current.

Follow-Up of Overdue Items Not Timely

While FERC received most of the 100 required compliance items we examined by the date they were due, existing oversight procedures did not ensure that prompt follow-up action was taken when required items were not provided on time. In all, 28 of the 100 items we examined were not received by the specified due date, but FERC took follow-up action for only 12 of these items within the time period specified by its procedures.[1] Of the remaining overdue items, FERC's follow-up action was late for 4 items and there was no evidence of any follow-up action on 12 items. FERC also did not take timely follow-up action when responses to resulting delinquency and deficiency letters were overdue.

For the 12 items showing no evidence of follow-up action, 7 submissions were received an average of 59 days late, and the project owners were late in requesting and being granted extensions of time on the remaining 5. FERC officials believed engineers made phone calls for several of these items, but there was no evidence of this in the files.

In one case, for example, we found no evidence that FERC had taken any follow-up action even though the project owner submitted his emergency action plan 55 days late and responded to a subsequent deficiency letter 87 days late. Furthermore, his response to the deficiency letter was a request for an extension of time, and he did not submit the required revisions to the plan until more than 3 months after the extended due date. A regional official indicated that a second extension was probably requested and granted by phone, but he could not provide any documentation to support this. Thus, even though the project owner was over a year and a half late in submitting an acceptable emergency

[1]FERC procedures specify that the engineer should wait 15 days after the due date before taking follow-up action to allow for any delays in mail delivery. We added a week for preparation and issuance of the delinquency letter. Thus we considered follow-up to be timely if it was taken within 22 days of the due date.

action plan, we could find no documentation of any FERC follow-up action.

Although the regional offices are responsible for monitoring to ensure that all required items are received when due and for taking follow-up action when items are overdue, for certain required items, headquarters offices are responsible for approving requests for extensions of time and determining whether the items submitted fulfill the requirements. Regional officials stated that because of inadequate communication between these offices, the regional staff were not always informed when (1) extensions were granted, (2) project owners were directed to submit additional information to correct deficiencies identified in the original submission, or (3) a required item was received.

In one case, for example, a regional official sent a delinquency letter to a project owner in July 1986 because the regional office records showed that the project's response to a headquarters letter concerning deficiencies in a dam stability analysis was overdue. The headquarters office, however, had received the revised analysis 3 months earlier, but had not informed the regional office.

Lack of Consistency in Follow-Up Actions

FERC's follow-up actions on similar overdue items were not consistent and ranged from phone calls to formal delinquency letters. This occurred because of the discretion given to FERC's regional engineers regarding the type of follow-up action that should be taken on overdue items. Because FERC can now impose a civil penalty on project owners who fail to comply with a license requirement, such inconsistent actions by FERC would result in inequitable treatment of project owners.

The DINS operating manual states that when a project owner does not submit a required item on time, the engineer should send a formal delinquency letter by certified mail. The letter is to set a response deadline of 30 to 60 days as appropriate. The manual also states that a phone call can be made instead of sending a delinquency letter, to expedite resolution, but the call should be documented and confirmed by sending a copy to the project with a cover letter. The instructions, however, do not provide specific guidelines as to what is to be stated in the phone call or what time frame the engineer is to use as a response date.

Other FERC instructions on late submissions vary. For example, a November 1984 memorandum indicated that to expedite matters a phone call could be made in lieu of a delinquency letter as long as it is

properly documented and filed. At the beginning of our review, however, a regional official indicated that phone calls were not normally documented. A regional official also commented on the inconsistency in certifying letters to a local project owner, stating that some letters are certified, others are picked up in person, and some are sent uncertified but are followed up with a phone call.

For the 16 overdue items for which FERC took follow-up action, 9 of the follow-up actions consisted of letters (two of which were not certified delinquency letters), 5 were phone calls that were documented in the project files, and 2 were discussions while the engineers were conducting physical inspections of the projects. The lack of consistency in the follow-up actions means that project owners that do not submit required items by the specified dates are not treated similarly. For example, two projects missed their deadline for developing an emergency action plan. The engineer monitoring the first project sent a formal delinquency letter, while the engineer monitoring the second project called the project owner to remind him that the required plan was overdue, and granted him a 3-month extension.

Because FERC can now impose a civil penalty on project owners who fail to comply with a license requirement, such inconsistent actions by FERC would result in inequitable treatment of the two owners because the delinquency letter sent to the first project owner would initiate the process for imposing a civil penalty, while the second owner would be allowed additional time to achieve compliance.

The operating manual also indicates that if a satisfactory response is not received by the date specified in the delinquency letter, the engineer should send a noncompliance letter to the project owner. The noncompliance letter is stronger in tone and indicates that enforcement action will be initiated if the project owner does not comply with the license or exemption requirement. For 4 of the 16 items for which FERC took follow-up action, the project owners did not meet subsequent response dates, but FERC did not send noncompliance letters.

Procedures Needed to Improve Accuracy and Usefulness of Tracking System

FERC has not established effective controls to ensure the accuracy of the data in HLCTS. Although FERC has spent over $700,000 to develop and operate the system, when we examined the HLCTS records and the supporting documentation for the sample of 100 compliance items, we found errors that affected the usefulness of the system both as a tracking tool and an oversight mechanism. These errors included (1) response

dates specified in delinquency or deficiency letters that were not recorded in HLCTS, (2) HLCTS records that were closed prematurely, before FERC had determined that an item submitted actually fulfilled the requirement, and (3) extension dates entered in HLCTS without adequate documentation justifying the extension of time. If the latest response date is not entered in HLCTS, the regional engineer will not be alerted by the overdue actions report that follow-up is needed when a response is not received. If the HLCTS record is closed out before the items are accepted, follow-up of any deficiencies subsequently identified cannot be tracked in HLCTS.

Although we examined only two of the five FERC regional offices, the differences in their procedures indicate the need for standard supervisory review procedures. Starting in 1984 when HLCTS was first implemented, most of the instructions for its use were in memorandums from headquarters, and FERC made frequent changes to resolve problems that arose in using the system. As a result of the informality of the instructions and the level of expertise in the regions, each region developed slightly different procedures. The HLCTS records for most requirements are set up by headquarters, but the regional office engineers initiate subsequent entries to reflect actions such as time extensions granted or delinquency and deficiency letters sent. In New York the actual entries are made by hydro resource analysts. Because of a staff shortage, entries in the San Francisco region were made by the engineers themselves or secretarial personnel until recently when they began forwarding the handwritten changes to headquarters for entry. New York changed its procedures in mid-1986 to require that all changes first be submitted by the engineer to the branch chief for approval along with any supporting documentation. San Francisco does not have a similar approval process.

HLCTS identifies the need for follow-up action when an item is not received by a specified date, such as the response date specified in a delinquency or deficiency letter. The project files showed that delinquency or deficiency notices were sent for 19 items in our sample. For 12 of these, however, HLCTS did not reflect the latest response dates. HLCTS, therefore, could not have identified the need for follow-up as it is intended to do. Of the response dates not entered in HLCTS, 4 had been established by delinquency letters or phone calls, and the remaining 8 had been established in deficiency letters.

Fortunately, FERC received on-time responses for 11 of these 12 items, thus no additional follow-up was necessary. Nevertheless, it is important to recognize that if a follow-up had been necessary, HLCTS would not have identified this need. FERC did not take timely follow-up action on the remaining item. As a result, FERC did not receive a response, which was a request for an extension of time, until 87 days after the date specified in the deficiency letter.

Regional engineers entered acceptance dates in HLCTS prematurely for 9 of 100 required compliance items we sampled, which closed the HLCTS records before FERC was sure that the submissions were satisfactory. FERC found that the submissions received for 4 of these 9 compliance items were deficient. However, because the HLCTS record had already been closed, FERC could not record the resulting deficiency letters or track compliance with their response dates. In one case, after receiving information about installation of a floodgate, FERC informed the project owner that such project changes had to be coordinated with federal and state fish and wildlife agencies, and directed the owner to submit copies of the agencies' written approvals by a specified date. FERC officials could not locate a response to the deficiency letter in the files and were therefore not sure that the appropriate coordination had taken place.

Some FERC engineers told us that they rely on informal tracking systems to determine when to take follow-up action. Engineers in San Francisco, for example, indicated that they rely on personal tickler files and calendars rather than HLCTS because the files or calendars contain a full historical account of the requirement, provide more timely information that can be updated more quickly, or provide the data in a more readable format. We do not object to such informal tracking systems, but believe their use does not eliminate the need for a formal tracking system, such as HLCTS. A formal tracking system facilitates uniformity in the monitoring process and permits necessary management oversight of monitoring and follow-up actions.

We also found instances of undocumented time extensions in HLCTS. We could not locate supporting documentation for 8 of the 28 HLCTS entries in our sample, which related to extension requests and approvals. The regional staff indicated that the extensions probably had been requested and granted by telephone. We believe informal handling of such actions is inappropriate because it provides no evidence justifying the need for the extension or showing that delaying the requirement would not jeopardize its intended purpose.

At the time these instances occurred, FERC had not established a clear policy for the documentation of extensions. However, FERC has since taken steps in that direction. For example, in December 1986, the Director of DINS instructed the regional offices to give greater scrutiny to time extensions for dam safety matters and to grant such requests only if good cause is shown, such as delays due to bad weather or the need for additional data. He also specified that any extensions for more than 60 days must be discussed with him before they are approved. In addition, he stated that in early 1987 the other offices in the Office of Hydropower Licensing also established procedures to make sure extensions are adequately justified.

We discussed these problems with FERC officials in January 1988, and they indicated that they plan to take steps to improve the accuracy of the data in the computerized tracking system and make the follow-up of overdue actions more timely and consistent. The steps being planned include (1) specifically defining individual responsibility for making HLCTS entries related to headquarters' actions, (2) developing procedures to cross check HLCTS data with other FERC tracking systems to ensure that all needed entries are identified, and (3) changing the procedures to specify the precise type of follow-up action that is to be taken when required items are overdue.

Problems Hamper Compliance Monitoring and Implementation of New Law

The problems identified and discussed previously impair FERC's ability to make sure that project owners are complying with license and exemption requirements in a timely manner. They also could impair FERC's ability to impose civil penalties under the ECPA in a fair and equitable manner.

As described in chapter 1, ECPA gives FERC the authority to impose a civil penalty on any project owner who violates or fails/refuses to comply with any order, rule, or regulation issued by FERC under the Federal Power Act or with any term or condition of a license or exemption. In determining the amount of the penalty, which can be up to $10,000 for each day the violation continues, ECPA directed FERC to consider the nature and seriousness of the violation and the efforts of the licensee to remedy the problem in a timely manner. In proposed regulations published in August 1987 to implement the civil penalty program, FERC indicated that it intends to consider the following items in determining the amount of the penalty to be imposed:

- Did the project owner have actual or constructive knowledge of the violation?[2]
- Does the project owner have a history of previous violations?
- Did the violation cause loss of life or injury to persons, damage property or the environment, or endanger persons, property, or the environment? and
- Were remedial efforts timely, not timely, or nonexistent?

Consequently, if consistent and timely follow-up action is not taken, project owners in similar situations will not be treated the same, which could make FERC vulnerable to claims of unfair and inequitable treatment when it imposes a civil penalty.

Inspections Were Generally Consistent With FERC Guidelines

FERC's periodic project inspections were for the most part conducted within the time frames specified by its guidelines. The frequency of inspections varies on the basis of the type of inspection and the hazard level of the dams. Of the 100 inspection reports we examined, 35 were for construction inspections, 60 were for operating inspections, and 5 were for other inspections, such as recreational/environmental inspections. FERC engineers check compliance with construction plans and specifications during construction inspections, and in operating inspections they verify that the project is being maintained and operated in compliance with the terms of the license or exemption.

All but 1 of the 60 operating inspections in our sample were done within established time frames, which ranged from 1 to 3 years. The exception was a very small project. FERC regional staff had been unable to contact the licensee to schedule an inspection, but was still trying to do so at the completion of our regional audit work in May 1987.

Of the 35 construction inspections in our sample, 9 were for licensed projects and 26 were for exempted projects. Although they were not done monthly as specified by FERC procedures, regional officials explained that seven of the nine construction inspections of licensed projects complied with FERC guidelines concerning frequency because of the deviations allowed for periods when weather restricts access to the sites or when limited construction work is being done. For the remaining two inspections, a regional official indicated that they had been delayed because of staffing constraints. Construction inspections of exempted

[2]Constructive knowledge is defined as that deemed to be possessed by a reasonable individual acting under similar circumstances.

projects, which are to be timed to verify start and completion of construction, were late in 11 of the 26 cases in our sample. Most of the late inspections were due in 1985 or earlier. The timeliness of exemption construction inspections improved in 1986.

In about 70 percent of the inspections in our sample, FERC identified no problems or only routine maintenance matters, which required no further follow-up. The more serious problems identified in the rest of the inspections were monitored to ensure resolution in a timely manner. In addition, our review of the project correspondence files revealed no other potential problems that should have been identified during the inspections.

Conclusions

FERC generally conducts physical inspections in accordance with its guidelines and ensures that any problems identified are corrected. However, we noted instances of late and inconsistent follow-up on items required by licenses and exemptions which indicate the need for improved managerial oversight in this area. FERC needs to improve its oversight to ensure that the regional office staff is promptly informed of headquarters' actions regarding approval of time extensions and issuance of deficiency letters for those items that headquarters offices must review and approve. Because of untimely and inconsistent follow-up actions, FERC cannot ensure that licensing requirements are being met in a timely manner or that the civil penalty program recently authorized by ECPA will be effectively and fairly implemented.

FERC's engineers seldom relied totally on information in HLCTS for determining when follow-up actions were needed. While we do not object to informal tracking methods, a formal tracking system is still needed to facilitate uniformity in the monitoring process and permit necessary management oversight. The usefulness of HLCTS as a monitoring and oversight tool, however, is limited because

- follow-up actions taken and the resulting response dates are not always entered in the system,
- entries made in HLCTS are not always supported by the required documentation, and
- compliance items are sometimes closed out in HLCTS before full compliance is achieved.

We believe that better supervisory review of the HLCTS data entry process would alleviate such problems. Supervisors should focus on making

sure that all delinquency and deficiency letters and the related response dates are entered in HLCTS and that all entries to HLCTS records are supported by proper documentation. A procedure recently established in the New York region would serve as a model for FERC's other regions. In New York, a branch chief must approve all changes before they are entered in HLCTS. This procedure was established too late to be fully evaluated in our review, but we believe it is a step in the right direction to ensure better internal controls over the system.

Recommendations

To ensure that FERC's internal controls over follow-up of overdue items are adequate and to provide for the fair and consistent implementation of FERC's new enforcement penalty program, we recommend that the Chairman, FERC, instruct the Director, Office of Hydropower Licensing, to increase managerial oversight to ensure that (1) regional office staff are promptly notified about headquarters' actions involving approval of time extensions and deficiencies found in submitted items and (2) staff comply with existing guidelines regarding the timeliness of follow-up actions. The Director should also prescribe uniform follow-up actions to be taken when required items are overdue so that similar problems result in similar corrective action.

In addition, to make HLCTS a more effective tracking and oversight tool, we recommend that the Chairman, FERC, instruct the Director, Office of Hydropower Licensing, to require supervisory review and approval of data entries submitted by the responsible regional staff. The supervisory reviews should ensure that all needed entries are made and that all entries are supported by adequate documentation.

Coordination and Documentation of Compliance Investigations Is Not Adequate

FERC investigates all potential instances of noncompliance brought to its attention through public complaints or identified by FERC's monitoring of licensing and exemption requirements. Most cases are handled by DINS or the regional offices that report to it. Cases that cannot be resolved by DINS or the regions or cases that involve legal issues or potential enforcement actions are referred to the Office of General Counsel's Hydroelectric Licensing section or the Enforcement group, which is also located in the Office of General Counsel. Our review of all complaint and compliance cases examined by FERC from January 1, 1985, through June 1, 1987, showed that poor coordination among these offices and inadequate oversight caused delays in resolving cases.

FERC found that no violations were committed in nearly one third of the cases closed during the period. Many other cases were resolved by the project owner's taking corrective action. Accordingly, processing delays frequently had no adverse effect. In a small number of cases, however, we believe that delays allowed a noncompliance condition to continue or precluded FERC from taking enforcement action. FERC, however, has taken steps that will help prevent such delays in the future.

FERC needs comprehensive information on the compliance history of individual projects to effectively implement two provisions of the 1986 Electric Consumers Protection Act. These provisions relate to relicensing of projects and the imposition of penalties for noncompliance with various license conditions. Because complete information about past compliance actions has not been consolidated in any one office, FERC needs to take action to ensure that complete information is available when it is needed for relicensing and enforcement purposes. Furthermore, because regional office staff have been delegated responsibility for maintaining files on all compliance actions for current and future cases, FERC needs to take steps to ensure that they are informed of all headquarters actions affecting compliance.

Because FERC is still in the process of implementing the ECPA, the law's impact on complaint and compliance cases cannot yet be determined with certainty. The existence of civil penalty authority may deter future violations, or, in some cases, lead to a speedier resolution or a change in the way cases are resolved. If the small number of cases in which the project owner is found to be in violation, however, is an indication of the future, the number of cases potentially affected by the ECPA may be minimal.

Coordination and Oversight of Investigations Was Lacking

About 30 percent of the cases that were investigated by FERC from January 1, 1985, to June 1, 1987, were under review for more than a year (see table 3.1). Moreover, 27 cases, or 15 percent, were under review for 2 or more years. These time frames appeared to be reasonable in certain instances, given the circumstances of the particular case, but in other instances FERC's files indicated periods of unexplained inactivity. While it is difficult to determine the exact cause of such delays, poor communication and coordination among the offices involved and the lack of effective oversight caused many of the delays to go unquestioned.

Table 3.1: Length of Time Cases Were Under Review by FERC.

	Number of cases under review		
	Less than a year	More than a year	Total
Complaint cases			
Closed	66	19	85
Open	39	14	53
Subtotal	**105**	**33**	**138**
Compliance cases			
Closed	2	13	15
Open	22	9	31
Subtotal	**24**	**22**	**46**
Total	**129**	**55**	**184**

Some cases took a long time to process and resolve for valid reasons. Some were very complex and required special studies, such as engineering analyses, to determine the cause of the problem or the best way to correct it. Cases involving several parties, such as complaints about flooding of multiple properties along a project's banks, may be very difficult and time consuming to resolve. Complaint and compliance cases resolved by settlement agreements inherently take longer because of the time needed to negotiate an acceptable settlement and to obtain an injunction from the courts when necessary to enforce the agreement.

For these reasons and because, according to agency officials, each case is unique, there is no average or standard for how long it should take to resolve a case. We examined all 55 of the cases that had been under review for more than a year, however, and found that 47 of them, or about 85 percent, showed unexplained lapses of time when FERC took no action. Precise reasons for the above delays could not be ascertained, although in a few cases subsequent correspondence indicated that the cases had simply been overlooked. A FERC official also indicated that because of work load, action on some cases may have been postponed

because of higher priority work. For whatever reason, however, we determined that

- for 10 complaint cases it took FERC more than 30 days, and as long as 15 months, after receipt to forward the complaints to the project owners,
- 10 cases were not referred to other offices for action in a timely manner, and
- 26 cases were not acted on promptly by the office to which they were referred.

In a few cases, delays were sufficiently long to preclude corrective action. In other instances delays allowed noncompliance to continue. As shown in the following examples, some cases involved all three types of delays described above and therefore are duplicative to that extent. More effective coordination and oversight would ensure that appropriate priorities are assigned and delays are minimized.

Although each office monitored the cases it was working on to some extent, cases that were referred from one office to another did not receive effective oversight. Furthermore, because very little communication and coordination occurred among the three offices, according to the Director of DINS, DINS staff seldom knew the status of cases once the cases were referred to one of the other offices. Such status information is important to DINS because it deals with all projects on a day-to-day basis.

To illustrate the lack of coordination among offices, both OGC Hydro and DINS began to investigate the same complaint and discovered the duplication only when the project's lawyer questioned why both were investigating the same issue. In another example, in April 1985 DINS wrote to OGC Enforcement inquiring about the status of a case of possible unauthorized operation that they had referred a year earlier and learned that the case had been closed for 4 months.

Some Complaints Not Promptly Forwarded to Project Owners

FERC engineers did not always promptly notify project owners of complaints filed against them. Although FERC procedures specify that complaints should be forwarded to the project owners for comment, no time frame for doing so is specified. Consequently, for 10 of the cases that were under review for more than a year, FERC took from 2 to 15 months to notify the owners. In those instances in which a project is violating FERC requirements, a delay in notification allows the violation to continue longer than necessary.

Nothing in the case files explained why the 10 complaint cases were not forwarded to the project owners sooner, although other later correspondence on 3 of the cases noted that the complaints had been overlooked. Four of the cases were still open at the completion of our audit work. FERC found that the project owner was violating FERC requirements in 5 of the 6 closed cases. Thus these violations continued longer than necessary because of delays in notifying the project owners of the complaints.

In one case, for example, FERC did not notify a project owner until May 1986 about a complaint received in August 1985 from a fish and wildlife agency, which claimed that the project was not complying with required minimum flow and other fish protection measures. The regional office worked with the project owner and the fish and wildlife agency from May 1986 until January 1987 but could not get compliance. The office then asked DINS for guidance, and DINS referred the case to OGC Enforcement in April 1987, where it was still under review at the completion of our audit work in July 1987.

Referral of Cases Not Always Timely

Ten cases were not referred to other offices for action in a timely manner. No guidelines exist for when cases should be referred to OGC Enforcement, because, as indicated by a FERC official, it is not possible to set guidelines that would cover all the different circumstances that might affect which cases should be referred or when they should be referred. We believe, however, that FERC's referral of these cases for consideration of enforcement action was not timely because (1) FERC did not refer 6 cases to OGC Enforcement for periods ranging from 3 months to over 2 years after they first received information indicating that unauthorized operation or construction had taken place and (2) in 4 cases project owners were not in compliance with certain terms of their licenses or exemptions for periods ranging from 1 to 3 years before the cases were referred to OGC Enforcement.

Five of the 10 cases had been closed before completion of our audit work. One of the five closed cases resulted in formal enforcement action, and in another the project owner surrendered his license. In the remaining three closed cases, OGC Enforcement decided that the violation was too old or circumstances had changed so that enforcement action was no longer feasible. The following example illustrates FERC's slowness in the referral of cases:

- One project owner was required to consult with fish and wildlife agencies and submit a study plan to assess the impact of the project's operation on fish resources by May 3, 1985. The project owner did not submit the plan, and the regional office sent letters in June and August 1985. In October the project owner requested and was granted an extension to July 1986. He did not meet this date, either, and the regional office sent letters in July, September, and November 1986. The regional office finally referred the case to DINS in December 1986, and DINS referred the case to the Office of General Counsel the same month. The case was still open in June 1987, more than 2 years after the original due date for the plan. The only indication of action by OGC Enforcement was a status sheet indicating that it was preparing a data request to determine the reason the project owner failed to comply with the requirement.

Office Receiving Referrals Did Not Always Take Timely Action

In 26 cases, the offices receiving referred cases for further investigation did not appear to initiate action promptly. This is illustrated by the following example as well as the example in the preceding section.

- In July 1986 OGC Hydro officials asked OGC Enforcement officials for an independent assessment of a DINS recommendation concerning a complaint claiming violations of a project's minimum flow requirement. DINS had recommended that the project owner be required to take remedial actions, such as increased monitoring of gauging stations and improvements in the measuring device. OGC Enforcement opened its review in August 1986, but when we reviewed the case file 3 months later, it showed no evidence that any action had been taken. OGC Enforcement still had not completed its review at the completion of our audit work in July 1987. Similar reviews by OGC Enforcement of recommendations on four other minimum flow complaint cases, which were opened in August and October 1986, were also still open in July 1987.

New Task Force Could Improve Coordination and Communications

In early 1987 during the course of our review, FERC established an informal task force consisting of one member each from DINS, OGC Hydro, and OGC Enforcement to coordinate processing of hydropower complaints. The task force's initial concern was to determine which cases were open and who was investigating them. It has resolved these initial problems and has moved to coordinating new cases by screening them to determine the appropriate office to act on them. The task force also exchanges information on the status of ongoing cases. Officials from all three offices have indicated that this will be a continuing effort, and the

task force is developing formal procedures and guidelines for its members to follow. As of January 1988 FERC was still developing the procedures.

We believe that with effective oversight, this process will help prevent the types of problems that led to delays in investigating cases in the past. The routine exchange of information and ideas on cases should ensure that the appropriate office is working on a case, facilitate the referral of cases from one office to another, and keep all parties informed on the status of open cases.

We discussed these matters with FERC officials in January 1988, and they indicated that they have been successful in reducing the time needed to resolve these cases. For example, the Director, DINS, indicated that FERC staff are now resolving complaint cases in 2 to 4 months.

Steps Needed to Compile Information for Implementation of New Penalty and Relicensing Provisions

In addition to the problems discussed in chapter 2 that impair FERC's ability to assess fair penalties under ECPA, FERC has not consolidated the information on project owners' past compliance histories that will be needed to effectively implement ECPA's penalty and relicensing provisions. ECPA specifies that FERC must consider a project owner's record of compliance with the terms and conditions of the owner's existing license in evaluating his application for relicensing. Furthermore, FERC's proposed regulations (issued Aug. 3, 1987) to implement the ECPA civil penalty provision indicate that a violator's history of compliance, among other things, must be considered in determining the amount of the penalty that will be imposed. These regulations had not been finalized as of January 1988.

We found no central files that completely documented FERC actions on cases referred between offices. DINS and OGC Enforcement had files on their actions regarding the complaint and compliance cases, but OGC Hydro did not. Furthermore, DINS' files contained little information about what happened to a case after it was transferred to OGC Hydro or OGC Enforcement. In other words, except for OGC Hydro, the offices generally had records of the actions they had taken on complaint and compliance cases, but the files of all offices involved in a case would have to be examined to get a complete account of the actions taken in a particular case.

The Director, DINS, told us that he recently directed the regional office staffs to set up a separate compliance file for each project and to file

any document in it that has anything to do with compliance. Because of the time required and staff constraints, it will be difficult to reconstruct a complete compliance history for each project. Doing so, however, will eventually be necessary for any projects for which FERC is imposing a civil penalty or considering a relicensing application. In these situations, the regional staff will have to search through the project files to locate the necessary documentation.

Because of the inadequate communications in the past, however, DINS and the regional offices were not always informed of actions OGC Hydro and OGC Enforcement took on complaint and compliance cases. As a result, in addition to searching the project files in the regional office, FERC needs to take steps to ensure that pertinent compliance information is also gathered from the headquarters offices. Furthermore, while we believe the new task force will improve coordination and communications among the headquarters offices involved in investigating cases, additional steps must be taken to ensure that the regions receive documentation on the disposition of future cases, particularly action taken by OGC Hydro or OGC Enforcement, so that the files being compiled on compliance matters will be complete.

The need for this compliance information will increase with time because the terms of many of the first licenses issued by FERC will be expiring and FERC's relicensing work load will increase. FERC forecasts that more than 200 licenses will expire in the next 6 years.

We discussed these problems with FERC officials in January 1988, and they indicated that they are developing a computerized system to supplement HLCTS and the compliance files being compiled by the regional office staffs. This system will record and compile information on all noncompliance actions. In addition, they indicated that the regional staff, as time is available, will compile past compliance information for those projects with licenses about to expire to prepare for the large number of projects subject to relicensing in the early 1990s.

Impact of Civil Penalties on Investigations Not Yet Determined

FERC is still in the process of implementing the civil penalty program authorized by ECPA; therefore, the extent to which it deters violations, and its impact on how cases are pursued and resolved, has not yet been determined. The existence of civil penalty authority may speed up the resolution of some cases or change the way they are resolved.

Our review of the 100 cases that were closed from January 1, 1985, to June 1, 1987, for example, showed that FERC determined that no violation had occurred in about one third of the cases, the project owner took corrective action in over half of the cases, and only 6 of the cases resulted in formal enforcement action. (See table 3.2.) However, not all of the cases that resulted in formal enforcement action in the past would necessarily have been candidates for some type of civil penalty. Conversely, some of the past cases in which FERC determined that no additional enforcement action was appropriate after the project owner took corrective action might have resulted in penalties under current civil penalty authority. We discuss such situations in the following paragraphs.

Table 3.2: Summary of How the Investigative Cases Were Closed

How the case was closed	Number of complaint cases	Number of compliance cases	Total
No violation found	26	9	35
Corrective action taken	52	0	52
Formal enforcement action	4	2	6
Other[a]	3	4	7
Total	**85**	**15**	**100**

[a]Cases that were closed in some other manner included one case in which the license for the project was surrendered and a case in which FERC determined that the problem was not caused by the operation of the project, but the project owner was studying the problem to see if any mitigating actions could be taken.

Civil penalties may not be appropriate for some cases. Two complaint cases, for example, resulted in the project owners' exemptions being revoked because they had failed to proceed with construction of the project within the specified time period. This seems a more reasonable solution than imposing a civil penalty because the reason for the requirement is to prevent someone from tying up a site without developing it. Thus, revoking the exemption frees the site so some other interested party can develop it.

Imposing a civil penalty also may not totally resolve some cases. Other enforcement action may be needed. The civil penalty is a good mechanism to encourage the project owner to bring his project into compliance or discourage future noncompliance, but it does nothing to correct any of the damage caused by past noncompliance. FERC resolved a complaint case involving violations of the minimum flow requirements, for example, by negotiating a settlement which, among other things, required the project owner to conduct studies to determine what actions should be taken to enhance the downstream fisheries. Similar action would have to be taken even if a civil penalty were imposed.

Now that FERC can impose a civil penalty for violations, it may not have to seek as many injunctions. In two of the past six cases involving formal enforcement action, FERC negotiated a settlement agreement and got a permanent injunction from the district court enjoining any violations of the agreement. Part of the reason for doing this was that the court had more enforcement authority than FERC and could take actions such as finding the project owner in contempt, imposing penalties for each day the violation continued, or requiring specified remedies.

In the past, some project owners resisted taking corrective action but FERC considered it more expeditious to work with them to get compliance than to initiate a formal enforcement action. As discussed in the previous section, we identified a number of noncompliance matters that were allowed to continue for long periods of time before they were referred for enforcement action. Because FERC now has the authority to impose civil penalties—a less severe penalty than prior options, such as revoking a project owner's license—FERC may initiate action sooner than it has in the past. The regional staff, for example, may refer cases for action soon after the project owner misses a deadline, and the threat of a civil penalty may cause project owners to be more responsive.

Conclusions

Ineffective communication and coordination among FERC units involved in resolving compliance cases have caused delays in completing some past cases. Future delays should be minimized as a recently established coordination task force develops and implements procedures for handling complaint and compliance cases. We believe, however, that further efforts will be needed to ensure that FERC's regional office staff are provided full documentation of actions taken on all complaint and compliance cases. This is particularly important because they have been directed to compile compliance information on all projects.

No one office has a complete record of past compliance actions for many individual projects. Therefore, in compiling historical compliance information, FERC must ensure that all offices involved are surveyed.

Recommendations

To ensure that complete compliance histories are compiled for use in considering relicensing applications and the imposition of penalties, we recommend that the Chairman, FERC, establish procedures to ensure that (1) files from all offices involved are examined in compiling compliance information on past cases and (2) complete documentation of headquarters' actions on current and future cases is included in the individual project compliance history files, which the regional offices maintain.

Trackable Items Included in Our Review

Description code		Number of items in sample	
		New York	San Francisco
Trackable items related to safety			
12	Construction quality control plan (to monitor and assess the quality of workmanship and materials)	2	8
13	Construction emergency action plan (emergency procedures in case of equipment failure during construction)	4	2
22, 24	Emergency action plan and update (to provide early warning of an impending or sudden release of water)	17	5
98	Part 12 report (report of a thorough safety inspection by an independent consultant required every 5 years for projects having dams at least 35 feet high or able to impound more than 2,000 acre-feet of water)	3	3
101, 180	Part 12 remedial actions and follow-up (project owner's plan to correct any deficiencies noted in a Part 12 report)	1	8
115-116	Safety conditions monitoring and report	0	0
150-154	Operational follow-up items (items needing correction noted during a physical inspection of the project by the FERC regional engineers)	12	9
164	Dambreak analysis	1	0
177	Dam repairs (minor)	4	3
178	Dam repairs (major)	1	0
183	Unauthorized construction or operation	0	0
Subtotal—Safety matters		**45**	**38**
Trackable items related to environmental concerns			
68	Fish passage study (study of the need to construct fish passage facilities to allow fish to bypass the generating facilities)	1	1
70	Fish screen study (study of the need to establish fish screens to prevent fish from entering the generating facilities)	1	1
71	Fishway construction (construction of passageways to facilitate movement of fish through a project site)	0	0
87, 89, 90	Minimum flow study, interim requirement, or permanent requirement (minimum flows are the specific amounts of water necessary to protect and enhance fishery and wildlife resources)	2	7
96	Oxygen concentration study (to determine the most feasible method for maintaining acceptable levels of dissolved oxygen in the water)	1	0
139	Water quality study (to determine the most feasible method for maintenance and improvement of water quality standards)	0	3
163	Relocation of gauging system (used to measure water flows)	0	0
Subtotal—Environmental matters		**5**	**12**
Total		**50**	**50**

Statistical Estimates for the Universe of the 27 Major Types of Compliance Items in the 2 Regions

Description	Region	Number of items		
		Sample results[a]	Universe estimates	
			Number[b]	Sampling error(+/-)[c]
Information from chapter 2 on follow-up of overdue items that was not timely:				
Items not received by the specified date	San Francisco	10	23	10
	New York	18	93	31
	Total	28	116	32
Overdue items for which FERC took timely follow-up action	San Francisco	1	2	3[d]
	New York	11	57	27
	Total	12	59	27
Overdue items for which FERC's follow-up action was late	San Francisco	2	5	5[d]
	New York	2	10	13[d]
	Total	4	15	13[d]
Overdue items for which FERC could provide no evidence of follow-up	San Francisco	7	16	8
	New York	5	26	19
	Total	12	42	21
Overdue items with no evidence of follow-up that were received late	San Francisco	4	9	7[d]
	New York	3	15	15[d]
	Total	7	25	17
Overdue items with no evidence of follow-up for which a time extension was granted	San Francisco	3	7	6[d]
	New York	2	10	13[d]
	Total	5	17	144[d]
Information from chapter 2 on lack of consistency in follow-up actions:				
Overdue items for which FERC took follow-up action	San Francisco	2	5	5[d]
	New York	14	72	29
	Total	16	77	29
Overdue items for which FERC's follow-up action was in the form of letters	San Francisco	1	2	3[d]
	New York	8	41	24
	Total	9	44	24
Overdue items for which FERC's follow-up action was a documented telephone call	San Francisco	0	0	0[d]
	New York	5	26	19
	Total	5	26	19
Overdue items for which FERC follow-up took place during a physical inspection	San Francisco	1	2	3[d]
	New York	1	5	9[d]
	Total	2	7	10[d]

(continued)

Description	Region	Number of items		
			Universe estimates	
		Sample results[a]	Number[b]	Sampling error(+/-)[c]
Overdue items for which FERC took follow-up action but the response date was not met	San Francisco	1	2	3[d]
	New York	3	15	15[d]
	Total	4	18	16
Information from chapter 2 on procedures needed to improve usefulness of tracking system:				
Items for which FERC sent a delinquency or deficiency notice	San Francisco	5	12	7
	New York	14	72	29
	Total	19	84	30
Items for which response dates to the delinquency or deficiency letters were not entered in HLCTS	San Francisco	4	9	7[d]
	New York	8	41	24
	Total	12	50	24
Response dates not entered in HLCTS that were established by delinquency letters or phone calls	San Francisco	1	2	3[d]
	New York	3	15	15[d]
	Total	4	18	16[d]
Response dates not entered in HLCTS that were established by deficiency letters	San Francisco	3	7	6[d]
	New York	5	26	19
	Total	8	33	20
Responses received on time for items for which latest response date was not in HLCTS	San Francisco	4	9	7[d]
	New York	7	36	22
	Total	11	45	23
Items for which acceptance dates were entered prematurely	San Francisco	6	14	8
	New York	3	15	15[d]
	Total	9	29	17
Items found to be deficient after HLCTS record closed	San Francisco	1	2	3[d]
	New York	3	15	15[d]
	Total	4	18	16[d]
Items for which time extensions were granted	San Francisco	8	18	9
	New York	20	103	31
	Total	28	122	33
Items for which HLCTS entries for time extensions were not supported by documentation	San Francisco	1	2	3[d]
	New York	7	36	22
	Total	8	38	23[d]

[a]These numbers reflect the actual numbers of items found in reviewing a sample of 50 items in each of the two regions.

[b]These numbers reflect the number of items we estimate would be found in each category if all 115 San Francisco and 258 New York compliance items were examined. Because these numbers are estimates, the totals do not always add due to rounding of the component numbers.

[c]Sampling error is a measure of the maximum amount by which the estimate may be expected to differ from the true value—the number we would have obtained if we reviewed all of the instances of the 27 major compliance items in our universe. Sampling error presented represents the 95-percent level of confidence.

[d]Sampling error computations are not exact due to the small sample size or other characteristics of the sample results.

Statistical Estimates for the Universe of Inspections in the Two Regions at the Time of Our Audit

Description	Region	Number of inspections		
			Universe estimates	
		Sample results[a]	Number[b]	Sampling error(+/-)[c]
Information from section of chapter 2, Inspections Were Generally Consistent With FERC Guidelines:				
Number of construction inspections	San Francisco	19	89	32
	New York	16	128	52
	Total	35	217	61
Number of operating inspections	San Francisco	28	131	37
	New York	32	257	61
	Total	60	388	72
Number of other types of inspections	San Francisco	3	14	14[d]
	New York	2	16	21
	Total	5	30	25
Number of operating inspections that were timely	San Francisco	27	126	37
	New York	32	257	61
	Total	59	383	72
Number of construction inspections of licensed projects	San Francisco	2	9	11[d]
	New York	7	56	37
	Total	9	66	39
Number of construction inspections of exempted projects	San Francisco	17	79	31
	New York	9	72	41
	Total	26	152	51
Number of timely construction inspections of licensed projects	San Francisco	2	9	11[d]
	New York	5	40	32
	Total	7	49	34
Number of construction inspections of exempted projects delayed because of staffing	San Francisco	0	0	0[d]
	New York	2	16	21[d]
	Total	2	16	21[d]
Number of late construction inspections of exempted projects	San Francisco	10	47	24
	New York	1	8	15[d]
	Total	11	55	29
Number of inspections in which FERC identified no serious problems	San Francisco	35	163	40
	New York	36	289	62
	Total	71	452	73

[a]These numbers reflect the actual number of inspections found in reviewing a sample of 50 inspections in each of the two regions.

[b]These numbers reflect the number of inspections we estimate would be found in each category if all San Francisco and New York projects were examined. Because these numbers are estimates, the totals do not always add due to rounding of the component numbers. We began with a list of 523 projects in the San Francisco region and 562 projects in the New York region. Because some projects could not be included in our review (projects that were not subject to inspection because construction had not started or former San Francisco projects that had been transferred to the recently established Portland region, for example), we had to select 112 San Francisco and 70 New York projects in order to examine 50 inspections in each region. On the basis of these results, we estimate that 233 projects (plus or minus 43) in the San Francisco region and 401 projects (plus or minus 56) in the New York region would have been inspected at the time of our audit work.

[c]The sampling error of estimates made from these samples represents a measure of the maximum amount by which the estimate may be expected to differ from the true value. The sampling errors presented represent the 95-percent level of confidence.

[d]Sampling error computations are not exact due to the small sample size or other characteristics of the sample results.

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